

Message Text

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ACTION NEA-10

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R 310629Z DEC 77
FM USINT BAGHDAD
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USDOC FOR CAGNE

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E.O. 11652: N/A
TAGS: BDIS, BEXP, IZ, US
SUBJECT: TRADE COMPLAINT: NATIONAL BROILER MARKETING
ASSOCIATION (NMBA) VS. GOVERNMENT OF IRAQ GENERAL
POULTRY COMPANY

REF: (A) 76 BAGHDAD 467, (B) 76 BAGHDAD 1086.

1. SUMMARY: GOI REFUSAL TO RELEASE TWO MILLION DOLLAR
PERFORMANCE BOND POSTED BY NMBA MAY JEOPARDIZE FUTURE DIRECT
SALES OF US FROZEN CHICKEN TO IRAQ BY THIS US MARKETING
ASSOCIATION. END SUMMARY.

2. IN APRIL, 1976, NATIONAL BROILER MARKETING ASSOCIATION
SIGNED A CONTRACT TO DELIVER 35,000 TONS OF FROZEN US
BROILERS TO IRAQ IN 10 SHIPMENTS BETWEEN JUNE, 1976 AND
NOVEMBER, 1977. REF. B REPORTED THAT
GOI OFFICIALS WERE
VERY PLEASED WITH QUALITY OF US PRODUCT FURNISHED BY NBMA.

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3. THE FINAL SHIPMENT WAS DELIVERED TO BASRAH PORT IN
MID-NOVEMBER,
1977, AND, ACCORDING TO THE TERMS OF THE
CONTRACT, THE NMBA'S REMAINING PERFORMANCE GUARANTEE,
2,038,750 U.S. DOLLARS, WAS TO HAVE BEEN RELEASED ON
NOVEMBER 24, 1977, TEN DAYS AFTER GOI'S RECEIPT OF THE
LAST SHIPMENT.

4. THE IRAQI CONTRACTING AGENCY, THE GENERAL POULTRY COMPANY, CENTRAL REGION, AND ITS SUPERVISORY ORGANIZATION, THE STATE ORGANIZATION FOR AGRICULTURAL DEVELOPMENT (SOAD) HAVE REFUSED TO RELEASE THE PERFORMANCE GUARANTEE AND HAVE FILED NOTICE OF A DISCREPANCY, CLAIMING THAT 1500 TONS OF FROZEN CHICKEN ARE MISSING FROM THE SHIPMENT. THE VALUE OF THIS CLAIM EXCEEDS THE AMOUNT OF NMBA'S PERFORMANCE GUARANTEE.

5. NMBA DENIES THAT SUCH LARGE SHORTAGES ARE POSSIBLE AND HAS PROVIDED SHIPS' BILLS OF LADING AND USDA GRADING CERTIFICATES (USDA FORM PY-210) TO SUBSTANTIATE THAT THE CONTRACTED QUANTITIES WERE SHIPPED TO IRAQ. NMBA, IN TURN, HAS A CLAIM PENDING AGAINST THE IRAQI GENERAL POULTRY COMPANY IN THE AMOUNT OF 526,062.20 US DOLLARS FOR UNPAID DEMURRAGE CHARGES AND LOSSES INCURRED WHEN THE GOI REFUSED TO ACCEPT A PORTION OF ONE SHIPMENT. NMBA WAS THEN FORCED TO SELL THE REJECTED QUANTITY AT AN ALLEGED LOSS.

6. THE PARIS-BASED NMBA REPRESENTATIVE FOR AFRICA, EUROPE AND THE MIDDLE EAST HAS BEEN IN BAGHDAD FOR SOME DAYS ATTEMPTING TO ARRANGE RELEASE OF THE DISPUTED PERFORMANCE GUARANTEE WHICH IS SCHEDULED TO EXPIRE ON DECEMBER 31, 1977. AS THE IRAQI SIDE HAS REFUSED TO RELEASE THE BOND OR TO CONSIDER ANY REDUCTION IN ITS LIMITED OFFICIAL USE

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AMOUNT, THE NMBA HAS NOW OBTAINED A RESTRAINING ORDER FROM A US COURT TO PREVENT THE US BANK, DEPOSIT GUARANTY NATIONAL BANK, FROM RESPONDING TO THE IRAQI (RAFIDAIN) BANK'S REQUEST FOR PAYMENT (FORFEITURE) OF THE PERFORMANCE GUARANTEE. THE IRAQI SIDE HAS NOT BEEN ADVISED OF THE ISSUANCE OF THE RESTRAINING ORDER BUT PROBABLY WILL BECOME AWARE OF IT AS SOON AS THE RAFIDAIN BANK CALLS FOR PAYMENT.

7. USINT COMMERCIAL OFFICER ACCOMPANIED THE NMBA REPRESENTATIVE IN CALLS TO THE GENERAL POULTRY COMPANY AND RAFIDAIN BANK. IN ACCORDANCE WITH THE INSTRUCTIONS IN 10 FAM 330, HE MADE CLEAR THAT HIS INVOLVEMENT WAS ONLY AS AN INTERMEDIARY AND CONCILIATOR AND THAT HE COULD TAKE NO POSITION IN SUPPORT OF EITHER PARTY.

8. DURING THE DISCUSSIONS ATTENDED BY THE COMMERCIAL OFFICER, WHICH WERE HELD IN A FRANK MANNER WITHOUT RANCOR, THE IRAQI SIDE STATED THAT SUBSTANTIAL DIFFERENCES EXIST BETWEEN THE AMOUNTS RECEIVED INTO THEIR WAREHOUSES IN THE SOUTHERN, CENTRAL AND NORTHERN REGIONS, AND THE AMOUNTS ALLEGED TO BE SHIPPED BY NMBA. THE IRAQIS PLEADED FOR AN ADDITIONAL WEEK OR TEN DAYS TO RECONCILE THE STOCK ACCOUNTS OF THE

SCATTERED STORAGE LOCATIONS. THE NMBA REPRESENTATIVE DECLINED TO GRANT ADDITIONAL TIME SINCE THE CONTRACT CLEARLY SPECIFIED DELIVERY, C&F, BASRAH PORT. THUS, NMBA CANNOT, ACCORDING TO HIM, BE HELD RESPONSIBLE FOR SHORTAGES WHICH OCCURRED BETWEEN BASRAH PORT AND INLAND STORAGE POINTS AND ANY SUCH SHORTAGES WOULD, IN ANY CASE, BE CHARGEABLE TO THE GOI WHICH, ITSELF, INSURED THE SHIPMENTS.

9. REPORTING OFFICER'S VIEWS: THIS DISPUTE, IF NOT RESOLVED TO MUTUAL SATISFACTION OF BOTH PARTIES, MAY HAVE AN ADVERSE IMPACT UPON FUTURE US FROZEN POULTRY EXPORTS TO IRAQ. THE GOI OFFICIALS CONCERNED HAVE EXPRESSED SATISFACTION WITH THE NMBA'S EXECUTION OF THIS CONTRACT AND ARE WILLING TO LIMITED OFFICIAL USE

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ENTERTAIN NMBA OFFERS ON PRESENT AND FUTURE TENDERS. HOWEVER, THE RAISING OF AN ALLEGATION OF DISCREPANCY IS A SERIOUS MATTER IN IRAQ AND MAY ONLY BE RESOLVED WITH

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LENGTHY PROCEDURES REQUIRING APPROVAL FROM HIGHER AUTHORITIES. IT IS LIKELY THAT THE IRAQI SIDE DID NOT

CONDUCT A PROPER ACCOUNTING FOR THE INCOMING SHIPMENTS UPON ARRIVAL AT BASRAH PORT AND THAT A FINAL TALLY CAN ONLY BE FORTHCOMING FROM THE INLAND WAREHOUSES. IT WOULD BE MOST SURPRISING IF SHORTAGES (4.3 PER CENT IN THIS CASE) DID NOT OCCUR DURING INLAND SHIPMENT OF A HIGHLY PERISHABLE COMMODITY LIKE FROZEN CHICKEN. HOWEVER, THE NMBA ASSERTS THAT ITS RESPONSIBILITY CEASED AT BASRAH PORT, IN ACCORDANCE WITH THE TERMS OF THE CONTRACT.

10. PERSONALITIES MAY PLAY A ROLE IN THE PRESENT DISPUTE. THE DIRECTOR GENERAL OF THE GENERAL POULTRY COMPANY, CENTRAL REGION, IS SAID TO HAVE OPPOSED THE ORIGINAL NMBA CONTRACT ON THE GROUNDS THAT HIS ORGANIZATION COULD NOT COPE WITH THE SHIPMENT OF SUCH LARGE AMOUNTS IN SO SHORT A PERIOD OF TIME. IT WAS, IN FACT, NECESSARY FOR BOTH PARTIES TO AGREE UPON A REVISED SHIPPING SCHEDULE IN ORDER TO MATCH INCOMING SHIPMENTS TO THE GOI'S LIMITED OFFICIAL USE

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RECEIVING CAPABILITY. THE DG OF THE POULTRY COMPANY MAY BE TRYING TO PROVE THE CORRECTNESS OF HIS ORIGINAL POSITION BY BEING DIFFICULT AT THIS TIME. HOWEVER, REPORTS OF SHORTAGES ARE TAKEN VERY SERIOUSLY IN THE IRAQI MILIEU AND AN IRAQI OFFICIAL WHO RELEASED A POTENTIAL CLAIM AGAINST A FOREIGN FIRM WITHOUT THOROUGH INVESTIGATION, WOULD BE VERY FAR OUT ON A LIMB. IRAQI DECISION-MAKERS ARE NOT NOTED FOR PROMPT ASSUMPTION OF RESPONSIBILITY IN SUCH CASES.

11. POST RECOMMENDATION: NO ACTION IS REQUIRED BY ADDRESSEES AT THIS TIME. THIS COMPLAINT IS REPORTED FOR INFORMATION ONLY AND TO INDICATE THE PITFALLS WHICH US FIRMS MAY ENCOUNTER IN IRAQ. FIRMS SIGNING CONTRACTS IN IRAQ SHOULD BE INFORMED THAT THE GOI RARELY RELEASES FINAL PERFORMANCE BONDS IN LESS THAN 90 DAYS AND RAFIDAIN BANK OFFICIALS TOLD USINT THAT SOME PERFORMANCE GUARANTEES DATING FROM 1974 HAVE STILL NOT BEEN RELEASED. THE NMBA'S CONTRACT PROVIDES FOR INTERNATIONAL ARBITRATION OF DISPUTES BY THE INTERNATIONAL CHAMBER OF COMMERCE IN PARIS. NMBA PLANS TO SEND ADDITIONAL REPRESENTATIVES TO BAGHDAD IN 10 DAYS. IF THE PARTIES ARE UNABLE TO REACH AGREEMENT AT THAT TIME, ARBITRATION WOULD PROBABLY BE THE NEXT RESORT. USINT WILL REPORT FURTHER DEVELOPMENTS. PECK

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